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Settlement Confidential
Subject to FRE 408

March 12, 2013

VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL

Allison Gardner, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC42)
Philadelphia, PA 19103

Re: North Penn Area 5 Superfund Site, Colmar, Pennsylvania ("Site")

Dear Ms. Gardner:

I write on behalf of Honeywell International Inc. ("Honeywell") in response to your October 24, 2012 letter ("October Letter"). The October Letter concluded that, at this time, the United States Environmental Protection Agency ("EPA") is unable to agree that Honeywell qualifies as either a *de micromis* party under Section 107(o) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(o), or a non-exempt *de micromis* party under EPA's *Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis Parties and Non-Exempt De Micromis Parties* (Nov. 6, 2002) ("*De Micromis Policy*"). For many reasons, we find the position reflected in the October Letter to be unsupported by the relevant facts and applicable law and EPA guidance. Honeywell continues to believe that it should be considered a *de micromis* party, and therefore should no longer be considered a potentially responsible party ("PRP") at the Site. Although we think it unnecessary and unproductive to restate our entire position here, we are compelled to respond to a few specific points in the October Letter. In doing so, Honeywell does not admit to any liability for the Site and preserves, without waiving, any and all rights, claims, or defenses it might have regarding the Site.

I. Honeywell Has Satisfied EPA Requirements for, and the Purpose of, De Micromis Settlements

Honeywell respectfully disagrees with the notion that the precise amount of Honeywell's contribution to Operable Unit 2 ("OU2") must be "clear" before a *de micromis* settlement is possible.¹ There is no such requirement in EPA's guidance and indeed such a requirement would be inconsistent with the very purpose of *de micromis* settlements. Rather, EPA guidance requires Regions to "use available documentary evidence to identify the individual amount of contribution"² and instruct Regions to "estimate the volume of waste present at the site using several methods" that do not need to produce "a precise figure."³ If Regions could avoid *de micromis* settlements by citing some imprecision in determining the volume of a PRP's waste stream, then *de micromis* settlements would be largely unobtainable, because some degree of uncertainty will always exist. Under the October Letter's strictures, *de micromis* settlements become a mirage that PRPs could strive for but never reach and such settlements cannot serve their intended and laudable purpose of providing relief to parties for whom "the administrative costs of determining and verifying the party's share, if any, and the costs of collecting the small payment, usually far exceed [its] share [of liability]."⁴

Honeywell understands the October Letter to indicate that, upon further delineation of the bedrock aquifer, EPA hopes that it will be in a position "to accurately assess Honeywell's contributions of TCE in relation to the total volume of TCE in the aquifer at OU2."⁵ Aside from whether such an investigation may or may not reveal any more relevant information about the single thirty-year-old leak attributed to Honeywell, such additional information is not necessary to reach the conclusion that Honeywell is a *de micromis* party at this Site. The administrative record in this case totals nearly 6,200 pages and already includes numerous technical reports and comments thereto, including:

- March 2002 Remedial Investigation/Feasibility Study ("RI/FS");
- July 2002 Remedial Investigation Report - Supplement I;
- July 2002 Proposed Remedial Action Plan for the Site;
- September 2003 Remedial Investigation Report - Supplement II;

¹ October Letter at 3.

² *Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A)* (July 30, 1993) at 1 ("*De Minimis Policy*") (emphasis added); *De Micromis Policy* at 4 ("The United States considers settlements with non-exempt *de micromis* parties to be a subset of *de minimis* settlements under CERCLA Section 122(g).").

³ *De Minimis Policy* at 1-2; see also *De Micromis Policy* at 4.

⁴ *De Micromis Policy* at 2.

⁵ October Letter at 3.

- December 2003 Ground Water Sampling Report - Task 1 of the Bioremediation Evaluation for OU2;
- June 2004 Bioaugmentation Microcosm Study Report - Task 2 of the Bioremediation Evaluation for OU2;
- June 2004 Record of Decision for OU1 and OU3;
- November 2004 Addendum to Bioaugmentation Microcosm Study Report - Task 2 of the Bioremediation Evaluation for OU2;
- October 2006 U.S. Geological Survey Borehole Geophysical Logging and Aquifer Isolation Tests Conducted in Well MG-1693 at North Penn Area 5 Superfund Site near Colmar, Montgomery County, Pennsylvania;
- September 2008 Proposed Remedial Action Plan for OU2;
- March 2010 Evaluation of Enhanced Anaerobic Bioremediation at North Penn Area 5 Superfund Site, Colmar, Pennsylvania; and
- September 2011 Record of Decision for Interim Remedial Action for OU2.

For nearly ten years, Honeywell has cooperated with EPA at this Site, including drafting and commenting on reports identified above and spending approximately \$360,000 in technical costs alone. All of the available information indicates that Honeywell's contribution (if any) to OU2 is orders of magnitude below the *de micromis* threshold and that, consequently, Honeywell's costs for this Site have already exceeded its share of any liability it may have for OU2.⁶ A sufficient record currently exists to conclude that Honeywell is a *de micromis* party that should no longer be considered a PRP at the Site, particularly in view of EPA guidance encouraging settlements with *de micromis* parties "as early in the response process as possible."⁷

II. Honeywell's Conservative Estimates of the January 29, 1980 Leak and the Size of the OU2 Plume are Supported by the Administrative Record and the Scientific Literature and Cannot Be Dismissed as Mere Speculation

We respectfully disagree with the October Letter's characterization of Honeywell's estimate of the volume of trichloroethene ("TCE") that leaked from Baron Blakeslee, Inc.'s ("BBI") truck on January 29, 1980, as being one "based almost entirely

⁶ See *De Micromis Policy* at 2.

⁷ *Methodology for Early De Minimis waste Contributor Settlements under CERCLA Section 122(g)(1)(A)* (Jun. 2, 1992) at 1; see also *De Micromis Policy* at 4.

on speculation.”⁸ Honeywell carefully reviewed EPA’s administrative record, which revealed evidence of one single leak associated with BBI’s activities on the Site. Honeywell compiled all the available information regarding this single leak and provided the information to Mr. Robert Mutch Jr., P.Hg., P.E., an expert consultant, who then estimated the volume of TCE that could have entered the subsurface due to the leak. Honeywell enclosed Mr. Mutch’s analysis in its August 17, 2012 letter. As explained in Mr. Mutch’s technical report and in Honeywell’s August 17, 2012 letter, Mr. Mutch applied the available facts and conservative assumptions to estimate that, at most, approximately 112 ml to 224 ml (3.79 oz to 7.57 oz) of TCE could have entered the subsurface as a result of the leak.

Any estimate of a leak that occurred over thirty years ago is bound to have some uncertainties, but that does not justify disregarding the professional technical judgment and analysis of an expert consultant as “mere speculation.” This is especially true in this case, where Mr. Mutch consistently applied conservative assumptions to resolve uncertainties. Indeed, given the eyewitness accounts in the administrative record, it is likely that Mr. Mutch overestimated the volume that reached the subsurface.⁹ Mr. Mutch’s estimate of the volume of TCE that leaked on January 29, 1980 is a sound estimate of the de micromis volume that could have penetrated the surface and is hardly “based almost entirely on speculation.”¹⁰

In response to the multiple lines of evidence establishing the de micromis volume of the TCE leak, the October Letter argues that “it is not clear that Honeywell’s contribution of hazardous substances at the Site are, in fact, very small,” citing the portion of a single document in the administrative record that describes the leak “running across the running board” and one statement from the RI.¹¹ However, the October Letter does not: (1) provide EPA’s own estimate of the volume leaked; or (2) reconcile the two isolated statements that EPA chose to include in the Letter with the multiple other relevant statements in the administrative record that describe the leak as “small” and consisting of “drips.”

With respect to description of the leak “running across the running board,” Honeywell has in fact addressed this statement. Unlike the October Letter, Honeywell has done so in the context of the other statements in that report. As Honeywell explained in its May 15, 2012 meeting with EPA and its August 17, 2012 letter, the very same document from which that statement is taken also describes the leak as “dripping” and

⁸ October Letter at 2.

⁹ See, e.g., Memorandum from P. J. Riley, to P. Dizikes, AR000060 (noting that Mr. Borchers, the North Penn Water Authority (“NPWA”) official who witnessed the leak, believed that the leak of TCE “probably evaporated on the parking lot before it reached the soil”).

¹⁰ See also Appendix A.

¹¹ October Letter at 2 & 3.

notes that the “majority” of it “did find its way into buckets.”¹² The October Letter ignores these important additional observations, as well as the fact that: (1) the very same document describes the amount that reached the asphalt parking as “small;”¹³ and (2) the author of the document believed that that these small amounts of TCE “probably evaporated on the parking lot before [they] reach the soil.”¹⁴ When evaluated in the context of the full document, and indeed the full administrative record, it is clear that the statement that EPA selectively included in its October Letter indicates that no more than a very small volume (if any) entered the subsurface due to the January 29, 1980 leak.

Although EPA also inexplicably considers Mr. Mutch’s estimate of the total mass of TCE in OU2 to be “based on speculation,”¹⁵ EPA’s guidance documents does not precondition *de micromis* settlements on a precise understanding of the total volume of waste at a site. Rather, Regions should “estimate the volume of waste present at the site using several methods” that do not need to produce “a precise figure.”¹⁶ That is exactly what Mr. Mutch did. He estimated the mass of TCE in the OU2 plume based on the administrative record (which includes data collected during the RI) and well-reasoned conservative assumptions (e.g., excluding DNAPL residual saturation) to estimate the mass of TCE in the OU2 plume to be 1,506 kg. Based on his estimates of the volume of TCE leaked from BBI’s truck, Mr. Mutch then estimated that the BBI leak could account for approximately 0.0110% to 0.0218% of the total TCE mass in OU2—a *de micromis* contribution.

The administrative record does not suggest even remotely that two 55 gallon drums worth of TCE—the *de micromis* threshold—escaped and made it to the environment. To suggest otherwise is to ignore the totality of the record.

III. The Remedial Investigation Does Not Indicate an OU2 Source Area Near the January 29, 1980 Leak

The October Letter purports to rely on the results of EPA’s RI to suggest that BBI contributed TCE to OU2 in addition to the amount (if any) that dripped from the delivery truck in January 29, 1980. The RI does not, however, support such a suggestion. Nowhere in the RI or the administrative record is there any indication of additional leaks or spills attributable to BBI. The October Letter is thus forced to speculate that “other unknown spills” or undocumented “spills or leaks from the TCE storage tank” may be attributable to BBI and may have contributed to the OU2 plume. The October Letter cannot categorically dismiss Honeywell’s reasonable estimate of the volume of the

¹² NPWA Spill Memorandum (Jan. 29, 1980).

¹³ *Id.*

¹⁴ Memorandum from P. J. Riley, to P. Dizikes, AR000060.

¹⁵ October Letter at 3

¹⁶ *De Minimis Policy* at 1-2; *see also De Micromis Policy* at 4.

January 29, 1980 leak as “speculation,” but then speculate that BBI was somehow responsible for unknown spills or leaks that find no support in the administrative record.

In stating that the OU2 “suspected source area is in the exact location” of the January 29, 1980 leak, the October Letter misconstrues the RI’s findings by overstating what was merely an assumption in the report and omitting the introductory clause from its quote of the RI:

The exact location of the main TCE source area at the Stabilus site is still unknown¹⁷

As EPA is aware, the vicinity of the January 29, 1980 leak was sampled extensively during the RI and:

[T]he subsurface soil data did not contain high concentrations of TCE — **consequently, the sample locations investigated during this RI probably do not represent the major TCE source area at the Stabilus facility.**¹⁸

The RI does not support the October Letter’s claim that the OU2 TCE source area is the location of the January 29, 1980 leak.

IV. The October Letter Fails to Account for Known Contributions to OU2

In speculating that undocumented spills or leaks contributed to the OU2 TCE plume, the October Letter ignores known contributions to the OU2 plume. As discussed in Honeywell’s previous submissions, American Electronics Laboratories (“AEL”) contributed extensively to (if not exclusively caused) the OU2 plume.¹⁹ AEL began operations at the Site in 1953, including operations on 4.14 acres that adjoined the southeastern portion of Stabilus’ future facility, parking lot, and storage area (“AEL 4 Acre Parcel”)²⁰ and are located within the RI’s assumed OU2 TCE source area.²¹ AEL’s

¹⁷ Draft Remedial Investigation Report (Revision 1) vol. 1 at 140, AR300956 (July 2002) (emphasis added).

¹⁸ *Id.* (emphasis added).

¹⁹ *E.g.*, Letter from Peggy Otum, Esq., to Allison Gardner, Esq., Senior Ass’t Regional Counsel, Region 3, EPA (Aug. 17, 2012) at p.1 & App’x A; Letter from Joel Bolstein, Esq., to Natalie Katz, Esq. & Allison Gardner, Esq., Office of Regional Counsel, Region 3, EPA (Jan. 30, 2004), AR000772; Letter from Joel Bolstein, Esq., to Roy Schrock, Remedial Project Manager, Region 3, EPA (Jan. 23, 2003), AR30340.

²⁰ Draft Remedial Investigation Report (Revision 1) vol. 1 at 4; Letter from Joel Bolstein, Esq., to Natalie Katz, Esq. & Allison Gardner, Esq., Office of Regional Counsel, Region 3, EPA (Jan. 30, 2004).

²¹ October Letter at 2; Draft Remedial Investigation Report (Revision 1) vol. 1 at 140.

operations included degreasing and the use of TCE.²² In approximately 1964, AEL constructed an unlined chemical pond to store wastewater from one of its facilities.²³ In 1979, AEL conducted sampling at the Site after TCE was detected in well NP-21 near its facility.²⁴ This sampling and subsequent investigations revealed, among other things:

- (1) TCE in AEL's wastewater effluent being discharged to the unlined chemical pond;
- (2) TCE in AEL's chemical pond water;
- (3) TCE in AEL's chemical pond sediments;
- (4) TCE in AEL's drum disposal area;
- (5) Spent solvents in AEL's underground storage tank; and
- (6) TCE in a sewer line that ran from direction of the AEL 4 Acre Parcel to AEL's facility near the chemical pond.²⁵

Based on particle image tracking that relies on the United States Geological Survey's groundwater model and accounts for historical pumping from well NWWA-16, Honeywell has demonstrated that the groundwater contaminated with TCE and originating near AEL's chemical pond and AEL's other known TCE disposal locations migrated to OU2.²⁶ When the RI was initiated in 1997—forty-four years after AEL's operations began and at least ten years after pumping from well NWWA-16 began—the known TCE contamination from AEL's operations had migrated to create the OU2 plume. The October Letter ignores AEL's known disposal of TCE and the particle image tracking results Honeywell provided, electing instead to speculate that BBI is responsible for unknown spills and leaks and speculating further that those unknown spills or leaks caused the OU2 plume.

²² Draft Remedial Investigation Report (Revision 1) vol. 1 at 4.

²³ Letter from Joel Bolstein, Esq., to Roy Schrock, Remedial Project Manager, Region 3, EPA (Jan. 23, 2003) at 2.

²⁴ Draft Remedial Investigation Report (Revision 1) vol. 1 at 5.

²⁵ *Id.*

²⁶ Letter from Peggy Otum, Esq., to Allison Gardner, Esq., Senior Ass't Regional Counsel, Region 3, EPA (Aug. 17, 2012) at p.1 & App'x A. "Ground water at the North Penn Area 5 site originates from infiltration of local precipitation" Draft Remedial Investigation Report (Revision 1) vol. 1 at 24. Accordingly, precipitation on the Site that infiltrated the groundwater first became contaminated with the TCE AEL disposed of throughout the Site.

Allison Gardner, Esq.

March 12, 2013

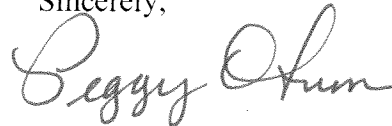
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We are troubled by the great lengths to which the October Letter goes in attempting to construct a theory of liability, unsupported by the facts and data in the administrative record, that appears intended to broaden BBI's nexus to this Site and which selectively ignores key portions of the administrative record demonstrating virtually no nexus between BBI's operations and the OU2 plume. The October Letter even concocts a theory of ownership liability based on undocumented spills or leaks from the storage tank, without citing to a single account in the administrative record of any such spills or leaks. To be clear, there are none.

We urge EPA to reconsider the position reflected in the October Letter and agree that, based on the available information in the extensive administrative record,²⁷ Honeywell is a *de micromis* party that should no longer be considered a PRP. We look forward to discussing this matter with you further. If you have any questions about this, please do not hesitate to call me at (202) 942-5965.

Sincerely,



Peggy Otum

Enclosure

cc: Tom Byrne, Esq. (Honeywell)
Chris French (Honeywell)
John Morris (Honeywell)
Eric Rey, Esq. (Arnold & Porter LLP)

²⁷ *De Minimis* Policy at 1; *De Micromis* Policy at 4

APPENDIX A

Settlement Memorandum

Project Number: HWEL.019

To: Eric Rey, Arnold & Porter
From: Robert D. Mutch Jr., P.Hg., P.E.
Subject: Matrix Porosity Estimate of the Brunswick and Lockatong Formations
Date: February 18, 2013
CC: Chris French

We have prepared this memorandum to supplement our August 3, 2012 memorandum, in which we estimated the fraction of the OU2 plume attributable to TCE that potentially could have entered the subsurface as a result of the observed dripping during the delivery of TCE to the Gas Spring Corporation facility on January 29, 1980 ("August 2012 estimate"). This memorandum responds to criticisms that our August 2012 estimate was speculative in part because of our use of porosity values for the New Haven formation.

Granted, the matrix porosities of the Lockatong and Brunswick formations in the project area have not been measured. However, the matrix porosity of similar sedimentary rocks has been extensively studied. In addition to the Lipson, et al (2005) study of the New Haven Arkose, we cited the Barrel (1914) study of the matrix porosity of rock samples. Barrel found that the mean matrix porosity of sandstone samples they tested was 14.8 percent. The mean matrix porosity of shale was found to be 8.2 percent. Lipson, et al (2005) found that the matrix porosity averaged 7.7 percent in the New Haven Arkose. These two studies, and additional studies of the matrix porosity of sedimentary rock from throughout the United States and Canada, along with the measured matrix porosities, are given in Table 1. The mean matrix porosity of the sedimentary rocks in these many formations is 9.7%. In this context, the use in our analysis of an average matrix porosity of 8.0% is conservative, as it proportionally decreases the amount of mass in the OU2 plume and thereby increases the fraction attributable to the observed dripping during the delivery of TCE to the Gas Spring Corporation facility on January 29, 1980.

Table 1		
Summary of Matrix Porosity Measurements in Sedimentary Rock		
Formation	Matrix Porosity %	Source
New Haven Arkose	7.7	Lipson, et al. (2005)
Multiple formations	8.2	Barrel (1914)
Cretaceous Sandstone	13	Sterling, et al. (2005)
Athebasca Formation	9.1	Feenstra, et al. (1984)
Queenston Shale, Ontario	10.8	Parker, et al. (1994); Barone, et al. (1990)
Bison mudstone, Oklahoma	23.4	Parker, et al. (1994); Barone, et al. (1990)
Proviso siltstone	10.4	Parker, et al. (1994); McKinley et al. (1991)
Hartselle sandstone	12.9	Parker, et al. (1994); McKinley et al. (1991)
Pottsville sandstone	4.6	Parker, et al. (1994); McKinley et al. (1991)
Pottsville shale	3.0	Parker, et al. (1994); McKinley et al. (1991)
Mudstone, Kentucky	9.2	Parker, et al. (1994); Rowe & Barone (1991)
Sandstone, Kentucky	3.7	Rowe & Barone (1991)
Mean	9.7	

It is also important to note that the range of mean porosity in these formations is modest. Changes in estimated porosity, therefore, produce only modest changes in the estimated mass of TCE in the plume. In light of the other conservative assumptions in the August 2012 estimate, the estimation of porosity has a negligible effect on the overall calculation.

References

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- Lipson, D. S., B. H. Kueper, and M. J. Gefell. 2005. Matrix diffusion-derived plume attenuation in fractured bedrock. *Groundwater*. v. 43, pp. 30-39.

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